ARGUMENT

OF

R. J. ATKINSON, ESQ.,

IN THE CASE OF

Hon. JOSEPH SEGAR.

ARGUMENT.

WASHINGTON CITY, Aug. 30, 1866.

SIR:

I beg leave to submit some considerations in relation to the case of Hon. Joseph Segar, of Elizabeth City County, Virginia, a distinguished and patriotic citizen, who, as you are doubtless aware, has been a true and devoted friend of the government, and has suffered greatly during the war. The question is as to the political status of his district, and the right of loyal inhabitants thereof to be recognized as citizens of the United States, and as such entitled to the protection of the Constitution and Laws. These grave questions have been decided, adversely, by a subordinate military officer. Mr. Segar has, therefore, appealed to the Chief Executive, confidently believing that such an appeal, by even the humblest citizen, will not be made to you in vain.

The facts in the case out of which this question has arisen, are as follows:

On the 24th day of May, 1861, the farm of Mr. Segar, called "Roseland," containing about 500 acres, situate in Elizabeth City County, Virginia, immediately adjoining Fortress Monroe, was taken possession of by Major General Butler, then commanding at Fortress Monroe, and together with the buildings thereon and a considerable amount of personal property, appropriated to the use of the United States. The purposes for

which the property was used, and its present condition, are set forth by Mr. Segar as follows:

"From the day of seizure to the present time, it has been occupied by the United "States for hospitals, stables, camp and drill grounds, work-shops, store houses "timber houses, school houses, dwellings for officers and master-workmen and other "government employes, quarters for colored freedmen, and for every imaginable "military use."

"The spoliation of the farm amounts to "irreparable injury." Not a building "is left but the mansion house and kitchen; not a rail or post remains of near seven "miles of fencing; not wood enough to build a fire or a panel of fence; deep exca- "vations deface the fields and impair their value, in fine, there is wanting no possible "mutilation or desolation.

It appears that a Board of Survey was detailed for the purpose of taking an inventory of the personal property, &c., as follows:

HEAD QUARTERS
DEPARTMENT OF VIRGINIA.
FORT MONROE, Va., May 26, 1861.

[Special Order, No. 2.]

"A Board of Officers, to consist of Colonel A. Durryea, fifth New York Vol- "unteers, Lieutenant Colonel J K. Warren, fifth New York Volunteers, "Brevet Major William Hays, Captain second Artillery, will assemble at "the camp of the fifth regiment New York Volunteers at twelve o'clock "meridian to-day, or as soon thereafter as practicable, and make an inven- "tory of such property belonging to Mr. Joseph Segar, of Elizabeth City "county, Virginia, as it may be necessary to take for the use of the govern- "ment of the United States; also, of such forage, mules, wagons, and other "property as Mr. Segar may be willing to dispose of."

The reasons assigned for the taking of the premises and property, were set forth in a letter addressed to Mr. Segar, by General Butler, on the 25th of June, 1861, as follows:

"The circumstances under which the occupation of your property near "Hampton, called by you "Roseland," occurred, were these: on the 22d of "May, I came to Fortress Monroe to take command of the department. "On the next day I had a consultation with Colonel De Russy as to the best "place for encamping the troops then about to arrive. I was fully deter- "mined to encamp them. The site was then determined upon. On the "same day I directed my chief of staff to select proper sites for camps "within the section indicated, and that the grounds should be taken posses- "sion of for that purpose, and that the owners should be notified that it "was so taken for a military exigency. I am informed that you, being "ascertained to be the owner, were so notified, and I believe this to have "been done. For the details of the proceeding I refer you to the letter of "Captain Stewart and Major Fay, United States Army, enclosed herewith. "I also was informed that there was upon the land and in your store-houses, "certain property very useful to my troops, which I caused to be taken, &c.

The claim for compensation for the occupation of the premises was presented to the Quartermaster General, who addressed

a letter to the Secretary of War, dated March 22d, 1866, as follows :

QUARTERMASTER GENERAL'S OFFICE,
WASHINGTON, D. C., March 24th, 1866

" Honorable EDWIN M. STANTON, *Secretary of War :*

" Sir :—I have the honor to submit herewith the papers in the claim of " Honorable Joseph Segar, for rent of his farm, called " Roseland," situated " in Elizabeth City county, Virginia, which was taken possession of by the " United States, on the 24th of May, 1861, and has been held by the govern- " ment with certain changes and releases of parts, until this time.

" Virginia was proclaimed as one of the States in insurrection on the " 27th of April, 1861. The portion of Virginia in which this property is " situated continued in rebellion under all subsequent proclamations until " the 1st of January, 1863, when Elizabeth City was among districts noted " as excepted by the proclamation of that date. This exception was revoked " on the 2nd of April, 1863. This district, then has been proclaimed in re- " bellion, except for about three months from the 1st day of January to the " 2nd day of April, 1863, ever since the estate for which rent is claimed has " been occupied by the United States.

" The claim is one for rent, and is in a rebellious district ; it cannot, there- " fore, be entertained under the act of July 4th, 1864.

" The whole district was in insurrection, and though the guns and garri- " son of Fortress Monroe prevented the occupation of the farm by any ac- " tive hostile force, it was in effect taken by military force as completely as " Vicksburg.

" This office cannot allow this claim under the ruling of the Murfreesboro, " and Vicksburg cases.

" Copies of the decisions in these cases are respectfully transmitted here- " with for reference.

" The whole question of the state of rental which would be proper in this " case is discussed in the report of the Board of Survey, the report of Brevet " Brigadier General J. J. Dana, Chief of the ninth division of this office, and " other papers herein submitted.

" It is not believed by the Quartermaster General that had this farm not " been formally occupied by the United States it would have been possible " for the proprietor to realize any income from its cultivation, exposed to " the depredations incident to a state of civil war, the presence of large bodies " of troops and negro-refugees—fugitives flying from slavery.

" It has not been shown that neighboring proprietors carried on the cul- " tivation of their grounds. The whole neighborhood, for miles, appears to " have been deserted. Mr. Segar, who has adhered to the Union cause, has " been a sufferer by the war, in common with all other landed proprietors in " the lower part of the peninsula.

" The United States occupied lands in various parts of the theatre of war, " at Fortress Monroe, at Newport News, about Yorktown and on the Chick- " ahominy.

" Should rents for any of these lands in a rebellious district be paid by the " Executive Departments, and if so, which ?

" With these remarks the case is respectfully submitted to the Secretary " of War."

It appears that the case was referred to the Chief of the Bureau of Military Justice, who made a report as follows:

WAR DEPARTMENT,
BUREAU OF MILITARY JUSTICE,
April 17, 1866.

"*To the Secretary of War:*

"The papers relating to the claim of Joseph Segar for compensation for "the use of his farm, in Elizabeth City county, Virginia, occupied by the "United States forces, are respectfully returned.

"The reasons which forbid the adjudication of this demand by the War "Department, are set forth at length by the Quartermaster General, and "the views of the class of cases to which this claim belongs, are fully ex- "pressed in the report of the "Vicksburg case," a copy of which enclosed "by the Quartermaster General, is found with these papers.

"Upon one point only is there any apparent difference of opinion between "the Bureau and the Quartermaster General, and that may be without im- "portance in this particular. It is mentioned, however, with a view to its "determination by the Secretary.

"The Quartermaster General remarks: "Virginia was proclaimed as one "of the States in insurrrection on the 27th day of April, 1861. The por- "tion of Virginia, in which this property is situated, continued in rebellion "under all subsequent proclamations, until January 1st, 1863, when Eliza- "beth City was among districts noted as excepted by the proclamations of "that date." This exception was revoked on the 2d of April, 1863. This "district then has been proclaimed in rebellion except for about three "months, or from the 1st of January to the 2d of April, 1863, ever since "the estate for which rent is claimed has been occupied by the United "States."

"For reasons which will be stated, this Bureau has taken a different view "of the exceptions contained in the proclamation of January 1st, 1863, and "has interpreted the language of that document as exempting the excepted "districts merely from the operation of the emancipation edict, and as not "affecting their status in respect to any other matter. The phraseology is "as follows: "and which excepted parts are for the present left precisely as "if this proclamation were not issued."

"To ascertain what the previously existing condition of these parts were, "recourse is had to the antecedent action of the government. It is found "that the proclamations of August 16th, 1861, and July 1st, 1862, both is- "sued in pursuance of acts of Congress, both declared the whole State of "Virginia save the portion west of the Alleghanies to be in insurrection. "It will be observed that so far from revoking the announcements contained "in these decrees, the proclamation of January 1st expressly contained the "excepted localities in precisely the same status which they already held, "and only relieved their slave property from the operation of the emanci- "pation clauses.

"Moreover, the Quartermaster General seems to have inadvertently fallen "into an error in the statement that the proclamation of April 2d 1863, re- "voked the exceptions of the proclamation of January 1st. The excep- "tions revoked were contained in the proclamation of August 16th, 1861, "and were in these words: "except the inhabitants of that part of Virginia "lying west of the Alleghany mountains, and of such other parts of that

"State and other States hereinbefore named as might maintain a loyal ad-
"hesion to the Union and the Constitution, or might be from time to time,
"occupied and controlled by forces of the United States engaged in the dis-
"persion of said insurgents." The exceptions, as modified, were left to stand
"as follows "except the forty-eight counties of Virginia, designated as West
"Virginia, and except, also, the ports of New Orleans, Key West, Port
"Royal, and Beaufort, in North Carolina." See Appendix No. 1 to acts of
"1863–64.

"These differences of view, and the error just mentioned, are repectfully
"pointed out with particularity, because it is believed that the Government
"might find itself embarrassed by having conceded that any of said excepted
"parts (Elizabeth City county, Virginia, for example) was not in insurrec-
"tion from January 1st to April 2d, 1863."

The "views" of the Chief of the Bureau of Military Justice, in the "Vicksburg case," to which he refers as expressing the reasons which forbid the "adjudication" of Mr. Segar's claim "by the War Department," are set forth in the following abstract of the opinion of the Judge Advocate General in the case of Albert H. Brown, for the rent of a warehouse in Vicksburg, as follows:

"The property for the use of which this claim is made, was occupied by
"the United States in a captured city, by virtue of the rights of the con-
"queror under the laws of war. No contract supports the demand. Notwith-
"standing the payment of rent in some similar cases, by different officers,
"the paramount right of a captor with respect to such property is not un-
"derstood to have been formally surrendered by the government, and it is
"believed that in view of the grave political questions which such action
"would involve and might compromise, the responsibility of renouncing that
"right should not be assumed by the Executive branches of administration
"without the clearest authority conferred by legislation. For such author-
"ity in this instance, appeal must probably be made to section two of the
"the act of July 4, 1864, chapter two hundred and forty. But two reasons
"exist against deriving it from that enactment. In the first place the use
"of a building taken possession of in this manner is not considered as fall-
"ing within the term "Quartermaster's stores," employed in the section
"cited; and secondly, even granting that this definition is applicable, as this
"claim originated in the State of Mississippi, and not in a loyal State, al-
"though the claimant is a loyal citizen of New Jersey, if the construction
"given to the statute referred to by circular No. 51, War Department Ad-
"jutant General's Office, November 27, 1865, be adhered to, the demand
"should not be entertained for reasons therein stated.

On these grounds of objection the claim was rejected.

As to whether or not any "income" would have been derived by the owner, had the property not been taken by the government, it is not deemed material now to inquire, as that question is entirely behind the objections above noted, which are

fundamental. Mr. Segar will be very willing to go into that investigation when the Department shall signify its readiness to do so.

It is proper to state that, at present, all that is claimed is a just and reasonable compensation for the *use* of the buildings and farm, by way of rent, as well as for such articles of personal property usually embraced in purchases for the use of the army, and which may be clearly shown to have been taken and applied to the military service, irrespective of any claim for *damages*, growing out of the use or occupation as stated. Mr. Segar does not wish to complicate his claim for rent, and for property actually taken and used, with any claim for *consequential damages*, which he very well understands is not a proper charge against any appropriation. That, of course, must await legislative action by Congress.

I.

It is objected that the State of "Virginia was proclaimed as one of the States in insurrection on the 27th of April, 1861."

There is manifest error in this statement of the Quartermaster General, and which does not appear to have been observed by the Judge Advocate General. The proclamation of the President delaring the inhabitants of the State of Virginia (except that part of the State lying west of the Alleghany mountains, &c.,) in a state of insurrection was not issued until the 16th *August*, 1861—*nearly three months after the occupancy of the property by the United States.* The proclamation of the 27th of April, 1861, simply declared a "blockade of the ports of the States of South Carolina, Georgia, Florida, Alabama, Louisiana, Mississippi, Texas, Virginia and North Carolina."

II.

The use of a building, or farm, is not considered as falling within the term "Quartermaster's stores," as used in the second section of the act of July 4th, 1864.

The Judge Advocate General does not appear to be clear on

this point in his opinion on the Vicksburg case ; for he proceeds to decide against it on another ground, admitting that the "definition is applicable." It is respectfully submitted that it is not material whether this claim be considered under the act of July 4th, 1864, or under the general legislation of Congress. But the term "Quartermaster's stores," as used in the act of the 4th of July, 1864, appears to be comprehensive and to include all such items of expenditure as legitimately come within the province of the Quartermaster General to furnish for the use of the army. Referring to the appropriations made by Congress, and the laws and regulations defining the powers and duties of the Quartermaster General, we find that he provides clothing, camp and garrison equipage, transportation by land and water ; horses, mules, wagons ; fuel and forage ; barracks and quarters for officers, soldiers and employees ; buildings for store houses, hospitals, &c., &c. For each of these objects of expenditure, appropriations are placed at his disposal ; and they all appear to be comprehended in the general designation of "Quartermaster's stores." If this be not so, how is it to be determined what are and what are not Quartermaster's stores? The act of July 4th, is silent ; it simply says : "all claims of loyal citizens in States not in rebellion for Quartermaster's stores actually furnished to the army of the United States, and receipted for by the proper officer receiving the same, or which may have been taken by such officer without giving such receipt, may be submitted." The Quartermaster General may erect buildings and the materials employed are styled "Quartermaster's stores." Is it not then, "sticking in the bark,' to say that compensation for the hire of buildings already erected may not be included in the same term? But, as before remarked, it did not require the enactment of the law of July 4th, to pay rent for these premises. There was a standing appropriation for this special purpose ; and this claim is a proper charge against that appropriation.

III.

"The whole district was in insurrection and though the guns and garri-
"son of Fortress Monroe prevented the occupation of the farm by any ac-
"tive hostile force, it was in effect taken by military force as completely as
"Vicksburg."—*Q. M. General's Report.*

When General Butler took possession of the premises there was no sign of resistance. Nor was there any pretence of disloyalty on the part of the owner. The Quartermaster General admits that Mr. Segar was an adherent of the Union cause and that he has suffered largely by the war. The reason assigned by General Butler for the taking of the property, was a "military exigency"—that it was necessary for the accommodation and support of the troops under his command. It was taken possession of under circumstances precisely like property was taken in this city and vicinity; and as it would have been taken in Pennsylvania, New York, or any other State of the Union at the time. It may be that "the guns and garrison of Fortress Monroe prevented the occupation of the farm by any active hostile force;" just as the guns and garrison comprising the cordon of fortifications with which this city was surrounded, prevented its occupation "by any active hostile force;" yet I have never heard that assigned as an argument why rent should not be paid for property taken for military purposes. During all the war, rents have been paid for property taken under similar circumstances in this city and District. And the same may be said of other sections of the country, which had been, at times, within the so-called confederate lines.

The county of Elizabeth City, Virginia, in which this property is situate, has never been in actual rebellion. It is an historical fact that on and after the 27th of May, 1861, to the end of the war, the county continued in the quiet and unresisted possession of the loyal citizens of the United States. Prior to that time, the disloyal and evil disposed portion of the inhabitants had left; and no organized body of rebel troops had at any time a foothold within its borders, nor was any obstruc-

tion offered to the execution of the laws of the United States. The authority of the government was respected and maintained during the whole war.

But the Quartermaster General evidently refers to the *political status* of this part of Virginia, as consequent on the issue of the President's proclamation of August 16, 1861, and subsequent proclamations.

That proclamation related mainly to trade and intercourse between loyal and insurrectionary districts, and was issued in pursuance of the act of 13th of July, 1861, providing "for the collection of duties and imports, and for other purposes." It declared as follows:

"Now therefore, I, Abraham Lincoln, President of the United States, in "pursuance of an act of Congress, approved July 13th, 1861, do hereby "declare that the inhabitants of the said States of Georgia, South Carolina, "Virginia, North Carolina, Tennessee, Alabama, Louisiana, Texas, Arkan-"sas, Mississippi and Florida, EXCEPT *the inhabitants of that part of* "*the State of Virginia* lying west of the Alleghany mountains, *and of* "*such other parts of that State* and the other States hereinbefore named *as* "*may maintain a loyal adhesion to the Union and the Constitution, or* "*may be from time to time, occupied and controlled by forces of the United* "*States engaged in the dispersion of said insurgents,* are in a state of in-"surrection against the United States, and that all commercial intercourse "between the same and the inhabitants thereof, with the exceptions afore-"said, and the citizens of other States and other parts of the United States "is unlawful, &c."

Now, it is true that Elizabeth City county is not excepted by name from the operations of the proclamation; but it is respectfully submitted that by the express language of the exception above quoted it is as perfectly and completely excepted as if it had been named specifically. The language of the exception is clear and comprehensive: "EXCEPT the inhabitants of *that part of the State of Virginia* lying west of the Alleghany mountains, and of *such other parts of that State* and the other States hereinbefore named, as may maintain a loyal adhesion to the Union and the Constitution, or may be, from time to time occupied and controlled," &c Why was this exception made: what was its intention and object? It was unquestionably introduced for a very important purpose. Taken in connection with the resolutions of the Senate and House of

Representatives, passed but a few days prior to the issue of the proclamation, it was an official declaration of the *object and policy* of the government in the war then about being waged against the armed forces of the insurgents. But fortunately, we are not left to grope in the dark, or call upon the "Bureau of Military Justice" for an exposition of the legal effect of this exception, or when it shall be considered as having been worked. That has been judicially determined by the Supreme Court of the United States, in a case arising near New Orleans, Louisiana, after the occupation of that city by the United States forces on the 1st day of May, 1862. The question came up in this way: the inhabitants of Louisiana were declared by the proclamation of August 16, 1861, as in a state of insurrection. The military and naval forces were despatched under command of General Butler and Admiral Farragut, and on the 1st day of May, 1862, the city of New Orleans was occupied by the United States forces. A few days afterwards a vessel belonging to an alien resident in New Orleans was captured by the United States ship of war "Calhoun," on lake Pontchartrain, taken to Key West, libelled as a prize of war in the district court, but directed to be returned; appealed to the Supreme Court of the United States and the decision of the court below affirmed. The question involved the *political status* of New Orleans at the date of the capture of the vessel, and Chief Justice Chase, in delivering the opinion of the court, said:

"The fifth section of the act of July 13, 1861, providing for the collection of "duties and for other purposes, provided that, under certain conditions, the Presi- "dent, by proclamation, might declare the inhabitants of a State, or any section or "part thereof to be in insurrection against the United States. In pursuance of this "act, the President on the 16th of August following, issued a proclamation declaring "that the inhabitants of the States of Virginia, North Carolina, Tennessee, Arkan- "sas, and the other States south of these, except the inhabitants of Virginia west of "the Alleghanies and of those parts of States maintaining a loyal adhesion to the "Union and the Constitution, or from time to time occupied and controlled by for- "ces of the United States, engaged in the dispersion of the insurgents were in a "state of insurrection against the United States.

"This legislation and executive action related, indeed, mainly to trade and inter- "course between the inhabitants of loyal and the inhabitants of insurgent parts of "the country; but by excepting districts occupied and controlled by national troops "from the general prohibition of trade it indicated the policy of the government

"not to regard such districts as in actual insurrection, or their inhabitants as subject, "in most respects, to treatment as enemies. Military occupation and control, to "work this exception, must be actual, that is to say not illusory, not imperfect, "not transient, but substantial, complete and permanent. Being such, it draws "after it the full measure of protection to persons and property consistent with a "necessary subjection to military government. It does not, indeed, restore peace, "or in all respects, former relations; but it replaces rebel by national rule, and re- "cognizes to some extent the conditions and responsibilities of national citizenship."

"The regulations of trade made under the act of 1861 were framed in accordance "with *this policy*. As far as possible the people of such parts of the insurgent States "as came under national occupation and control, *were treated as if their relations to* "*the national government had never been interrupted.*"

And so we find that in the emancipation proclamation of January 1st, 1863, the county of Elizabeth City with certain other counties not named in the proclamation of August 16, 1861, was exempted from the operations of said proclamation and from the rebellious condition. By comparing the proclamation of January 1st, 1863, with that of the 16th of August, 1861, it will be seen that the States and parts of States exempted from the operations of the proclamation of the 1st of January, 1863, were precisely such as come within the exceptions specified in the proclamation of the 16th of August, 1861, thus showing, conclusively, that the President intended to adhere to and carry out the policy indicated in those exceptions in good faith. Thus, the whole State of Tennessee, the inhabitants whereof had been declared in insurrection by the proclamation of August 16th, 1861, was exempted from the proclamation of the 1st of January, 1863; so, also, thirteen parishes, comprising a good portion of the State of Louisiana, including the city of New Orleans, and the additional counties of Berkely, Accomac, Northampton, Elizabeth City, York, Princess Ann and Norfolk, including the cities of Norfolk and Portsmouth in Virginia: said States and parts of States having "maintained a loyal adhesion to the Union and Constitution," or been "occupied and controlled by forces of the United States engaged in the dispersion of said insurgents;" and therefore, in the language of Chief Justice Chase, were not to be regarded "in actual insurrection, or their inhabitants as subject, in most respects, to treatment as enemies;" but entitled to "the

full measure of protection to person and property consistent with a necessary subjection to military government."

It is said, however, by the Quartermaster General, that this exception was revoked on the 2nd of April, 1863. This the Judge Advocate General disagrees to, or rather, he controverts the admission of the Quartermaster General that from January 1st, 1863, until the 2nd of April, 1863, the county of Elizabeth City was to be considered as *not* in insurrection. Here, again, the decision of the Supreme Court is directly in point. The proclamation of April 2nd, 1863, is also known as of date of March 31st, 1863, being published in the laws as of the latter and in the Treasury regulations as of the former date. They are identical, however, the one being a perfect transcript of the other with the exception of dates. In the decision of the Supreme Court, before referred to, it is spoken of as the proclamation of March 31st, 1863, and the Chief Justice, speaking of its effect on this question, said:

"It is true that the general exception from the prohibition of commercial inter-"course which has just been mentioned, was cancelled and revoked by the Presi-" dent's proclamation of 31st of March, 1863, and, instead of it, a particular excep-" tion made of West Virginia and of the ports of New Orleans, Key West, Port Royal " and Beaufort in North Carolina. But this revocation merely brought all parts of "the insurgent States under the special licensing power of the President, conferred " by the act of July 13th, 1861. *It affected in no respect the general principles of pro-*"*tection to rights and property under temporary government, established after the restora-*"*tion of the national authority.*"

"The same policy may be inferred from the conduct of the war. Wherever the " national troops have re-established order under national rule, the rights of per-" sons and of property have been, in general, respected and enforced. When Flag " Officer Farragut, in his first letter to the rebel mayor of New Orleans, demanded "the surrender of the city, and promised security to persons and property, he ex-" pressed the general policy of the government. So, also, when Major General But-" ler published his proclamation and repeated the same assurance, and made a dis-" tinct pledge to neutrals, he made no declaration which was not *fully warranted by* "*that policy*. Neither the assurance nor the pledge was given as condition of sur-"render. Both were the manifestation of a general purpose which seeks the re-es-" tablishment of the national authority, and the ultimate restoration of States and " citizens to their national relations, without any views of subjugation by conquest."

Now, apply these executive acts and principles, as construed by the Supreme Court, to the present case. The inhabitants of the county of Elizabeth City, Virginia, stood in the relation of loyalty to the government during the whole war; and they were specially excepted from the edict of emancipation of

1st January, 1863. The people of the district of which it comprises a part elected a member to represent them in the United States Congress. Hon. Joseph Segar, the present claimant, was chosen and represented the district in the thirty-seventh Congress, until the expiration of his term, March 3d, 1863. The people of the county have paid taxes to the United States; they have been represented in Congress; they have "maintained a loyal adhesion to the Union and the Constitution;" with what show of reason or justice, then, shall they be told by the Quartermaster General, or the Chief of the "Bureau of Military Justice," that they are under the ban as insurgents, having no rights of property that the government is bound to respect; and not entitled to the benefit of the constitutional provision that private property shall not be "*taken for public use without just compensation.*"

But, again: By the act approved July 4th, 1864, Congress made provision for the payment of certain claims of "loyal citizens in States not in rebellion." Under this act, on the 29th August, 1864, Rules and Regulations were promulgated by the Quartermaster General, "approved" by the Secretary of War, of which part 1st of section three is as follows:

"1st. That the claimant is a loyal citizen of a State not in rebellion. Claims of "citizens of the following States and parts of States, declared by the President of "the United States, by his proclamation of the 1st day of January, 1863 to be in "rebellion will not be considered, viz: Arkansas, Texas, Louisiana, (except the par-"ishes of St. Bernard, Plaquemines, Jefferson, St. John, St. Charles, St. James, "Ascention, Assumption, Terre Bonne, Lafourche, St. Mary, St. Martin and Or-"leans, including the city of New Orleans,) Mississippi, Alabama, Florida, Geor-"gia, North Carolina and Virginia, (except the forty eight counties designated as "West Virginia, and also the counties of Berkeley, Accomac, Northampton, *Eliza-"beth City*, York, Princess Anne and Norfolk, including the cities of Norfolk and "Portsmouth?"

Here we find an express recognition, with the approval of the Secretary of War, of claims of loyal citizens of the county of Elizabeth City, Virginia, as entitled to the benefit of the act of July 4, 1864. This construction of the act was promulgated by the Quartermaster General (General Orders, No. 35) as "*approved*," by the *Secretary of War*; and, therefore, has the

force and effect of law, and is to be regarded as the act of the President himself.—*Wilcox vs. Jackson*, 13 *Peters*, 498.

And to place the matter beyond the possibility of doubt or cavil, an Executive order of the late President is produced, directing that the county of Elizabeth City, Virginia, shall be recognized with the other counties composing the congressional district, as a loyal district, viz:

EXECUTIVE MANSION,
WASHINGTON, November 4, 1862.

Commissioner of Internal Revenue:

SIR: "It was by some oversight that the Eastern shore counties of Virginia, and "some other counties of Hon. Mr. Segar's district, were not classed as loyal in the "proclamation of September. I intend to set this right the first convenient opportunity. Meanwhile, please consult with Mr. Segar, and act with his district as with "A LOYAL DISTRICT."

Yours truly,

A. LINCOLN.

And he did set it right in his next proclamation, viz: January 2, 1863, as we have seen.

But it is said that "the responsibility of renouncing that right" (the right of the conqueror) "should not be assumed by the Executive branches of the administration without the clearest authority conferred by lgislation," in view of "the grave political questions which such action would involve and might compromise."

What these "grave political questions" are which rise before the vision of the Judge Advocate General and cause him to cling with such tenacity to the barbarous code of the conqueror we are left to conjecture. He does not state them. Nevertheless, we are bound to presume that they relate to the political *status* of the States, and parts of States the inhabitants whereof were declared to be in insurrection. It is respectfully submitted, however, that such questions do not lie within the domain of military discretion, nor of the "Bureau of Military Justice." It is well settled that their decision pertains, exclusively, to the political department of the government.

The question of the *status* of the state of Virginia was considered in both Houses of Congress during the 37th session,

after the rebellion had broken out. It came up on the aplication of Messrs. Carlisle and Willey for admission as Senators, at the special session in July, 1861. Messrs. Mason and Hunter had withdrawn, a State Convention had passed an ordinance of secession, and the battle of Bull Run had been fought on the soil of Virginia. That portion of the people remaining true to their allegiance to the United States, had elected, on the 23d of May, 1861, members of the legislature which, on the 9th of July following, elected Messrs. Carlisle and Willey to fill the vacancies, and represent the State of Virginia. The *status* of the State, and her loyal citizens, was fully discussed. Mr. Johnson, of Tennessee, in the course of his remarks, said:

"Will the United States stand by and see a loyal portion of a State, maintaining "all the authorities, prevented from having a fair and equal participation in the gov-"ernment, and to that extent favor and tolerate and sanction open rebellion, and "encourage insurrection in another portion of the same State? I say it is the duty "of the Senate, and the duty of the House of Representatives to stand by these "loyal men, to stand by Virginia as long as she is loyal to the Constitution, to "stand by that sentiment which is trying to sustain and will in the end sustain the "supremacy of the Constitution and the laws."

Mr. Collamer said:

"This is in the nature of a judicial proceeding; we are now judging of the qualifi-"cations of our members. It is not at all an uncommon thing in our highest tri-"bunals, that points arise in the investigation of cases where the court is constrained "to say "that is a political question; with that the courts have nothing to do." "For instance: whether a foreign government recently commenced has become an "independent people, whether in court it is to be treated and considered as a na-"tion, is not a point on which the court can decide. That is a political question; "and if the Executive Head of the government has received ministers from that "power, recognized it as a power on earth, the courts cannot go into the question "whether he did it right or did it wrong. It is a matter of political action and the "political power is what settles it, and we cannot examine into it any more. In an-"alogy to that, in this judicial proceeding, must we not be governed by the fact "that the government of Virginia that has executed these papers and sent them to "us, *is recognized by our Executive?* They have called on him for militia, and have "received militia from him. He recognises them as the government of Virginia. "*It is a political question; it is settled.* There is no occasion for our inquiring fur-"ther into that."

On these facts and principles, the Senators were admitted by a nearly unanimous vote, viz: yeas 35, nays 5.

Congressional Globe, July 13th, 1861, page 109.

And in the House of Representatives, Mr. Segar and other representatives from Virginia were admitted to and held their seats until the close of the Congress, March 3, 1863.

In support of the correction of this action numerous authorities might be cited.

In the case of Martin *vs.* Mott, 12, Wheaton, 19, Mr. Justice STORY, in delivering the opinion of the court, said:

"The law does not provide for any appeal from the judgment of the President, or "for any right in subordinate officers to review his decision and in effect defeat it. "Whenever a statute gives a discretionary power to any person, to be exercised by "him upon his own opinion of certain facts, it is a sound rule of construction, that "the statute constitutes him the sole and exclusive judge of the existence of those "facts. And, in the present case, we are all of opinion that such is the true con- "struction of the act of 1795. It is no answer that such a power may be abused, "for there is no power which is not susceptible of abuse. The remedy for this, as "well as for all other official misconduct, if it should occur, is to be found in the "Constitution itself. In a free government, the danger must be remote since in "addition to the high qualities which the Executive must be presumed to possess "of public virtue and honest devotion to the public interests, the frequency of elec- "tions and the watchfulness of the Representatives of the nation, carry with them "all the checks which can be useful to guard against usurpation or wanton "tyranny."

And in Luther *vs.* Borden, 7, Howard, 1, the same doctrine is affirmed:

"In the case of foreign nations, the government acknowledged by the President "is always recognized in the courts of justice. And this principle has been applied "by the act of Congress to the sovereign States of the Union."

Chief Justice TANEY, Id. 44.

See, also:

Rose *vs* Himely, 4 Cranch, 241; Gelston *vs* Hoyt, 3 Wheaton, 246; Kennett *et. al. vs* Chambers, 14 Howard, 38.

And in a case during the war, in the United States District Court, Eastern District of Missouri, TREAT, J., said:

"The condition of peace or war, public or civil, in a legal sense, must be deter- "mined by the political department, not the judicial. The act of 1795 and the "act of July 13th, 1861, vest the President with the power to determine when in- "surrection exists, and to what extent it exists. * * * In short, the *status* of "the country as to peace or war is legally determined by the political and not the "judicial department. The same power which determines the existence of war or "insurrection, must also decide when hostilities have ceased—that is, when peace "is restored."—*Amer, Law Register vol.* 2, *N. S.*, 430.

Thus we have seen that the responsibility of deciding these "grave political questions," *has been assumed,* and that they have been decided by the only department of the government authorized to make such decision. The county of Elizabeth City, Virginia, by virtue of the President's proclamations, the decisions of the Supreme Court, and the legisla-

tive action of Congress, must be recognized as a "loyal district" during the whole war.

IV.

"The property for the use of which this claim is made, was occupied by the United States in a captured city, by virtue of the rights of the conqueror under the laws of war. No contract supports the demand. Notwithstanding the payment of rent in some similar cases, by different officers, the paramount right of a captor with respect to such property is not understood to have been formally surrendered by the government."

(Abstract of Judge Advocate General Holt's opinion in "the Vicksburg case," to which "class of cases" he assigns this claim.)

It is but just to say that here are enunciated, clearly and boldly, the principles which govern the Military Bureaus in their action on claims of citizens residing in what are termed "disloyal districts," and "States in rebellion." It matters not that the claimant from whom property or supplies have been taken, is shown by the most indubitable testimony to have adhered to the government and the flag under the most trying circumstances; though he may have served in our armies, fought our battles, shed his blood in defence of the Union and the Constitution, the inexorable response is "you were a resident of a disloyal district, of a State in insurrection—we know you not."

"No contract supports the demand," says the Chief of the Bureau of Military Justice. Behold the Constitution, for the preservation of which half a million of men have laid down their lives, and untold millions of treasure have been expended: *Article* VI: "Nor shall private property be taken for public use without just compensation."

"Where the owner has done nothing to forfeit his rights, every public officer is "bound to respect them, whether he finds the property in a foreign or hostile "country, or in his own."

"There are, without doubt, occasions in which property may lawfully be taken "possession of or destroyed to prevent it from falling into the hands of the public "enemy, and also where a military officer, charged with a particular duty, may "impress private property into the public service or take it for public use. Unquestionably, in such cases, the government is bound to make full compensation to the "owner; but the officer is not a trespasser."—*Mitchell vs. Harmony,* 13 *Howard* 115.

"*The rights of the* CONQUEROR *under the* LAWS OF WAR!" It is not enough that Congress has enacted a law providing for the settlement of claims of loyal citizens of States not in rebellion, *at the time of its passage;* that the President in his Proclamations declared that such "parts of States" in insurrection as might maintain "a loyal adhesion to the Union and the Constitution, or might be from time to time occupied and controlled by the forces of the United States engaged in the dispersion of the insurgents," were *excepted* from the rebellious condition; that the Supreme Court has decided that this exception is worked whenever such occupation and control by the United States forces is "substantial, complete and permanent." It matters not that the President and Congress have solemnly declared to the world that the war was waged solely for the preservation of the Constitution and Union, and the restoration of the lawful authority of the government; that the Supreme Court has decided that permanent occupation and control by the United States troops "draws after it the full measure of protection to persons and property;" that such an "assurance only expressed the general policy of the government," which seeks "the establishment of the national authority, and the ultimate restoration of States and citizens to their national relations, under better forms and firmer guarantees, and *without any views of subjugation by conquest.*"

The rights of the conqueror, says the Judge Advocate General, are "not understood to have been formally surrendered by the government!" Let us recur to history.

In his first proclamation, April 15, 1861, declaring that the execution of the laws was obstructed in certain States, and calling forth 75,000 militia, the President stated:

"I deem it proper to say that the first service assigned to the forces hereby called "forth will probably be to repossess the forts, places and property which have been "seized from the Union; and IN EVERY EVENT the utmost care will be observed, "consistently with the objects aforesaid, to avoid any devastation, any destruction "of *or interference with* PROPERTY, or any disturbance of *peaceful citizens in* ANY "PART OF THE COUNTRY."

In his message to Congress, July 4th, 1861, after reciting the circumstances connected with the act of secession, so called, in Virginia, President LINCOLN said :

"The people of Virginia have thus allowed this giant insurrection to make its "nest within their borders ; and this government has no choice but to deal with it "*where* it finds it. And it has the less regret, as the loyal citizens have, in due "form, claimed its protection. Those *loyal citizens this government is bound to re-* "*cognize and protect*, as being Virginia."

And further:

"Lest there be some uneasiness in the minds of candid men as to what is to be the "course of the government toward the southern States *after* the rebellion shall have "been suppressed, the Executive deems it proper to say, it will be his purpose then, "as ever, to be guided by the Constitution and the laws; and that he probably will "have no different understanding of the powers and duties of the Federal govern "ment relatively to the rights of the States and the people, under the Constitution, "than that expressed in the inaugural address." He desires to preserve the govern- "ment, that it may be administered for all, as it was administered by the men who "made it. Loyal citizens everywhere, have the right to claim this of their govern- "ment; and the government has no right to withhold or neglect it. It is not per- "ceived that, in giving it, there is any coercion, any conquest, or any subjugation, "in any just sense of these terms." * * * * "He simply hopes "that your views and your action may so accord with his, as to assure all faithful "citizens who have been disturbed of their rights, of *a certain and speedy restoration* "*to them, under the* CONSTITUTION *and the* LAWS. And having thus chosen our course "without guile and with pure purpose, let us renew our trust in God, and go for- "ward without fear and with manly hearts."

With this solemn invocation before them, the House of Representatives passed the memorable resolution offered by Mr. Crittenden, by a vote of *yeas* 121, *nays* 2; as follows:

"*Resolved by the House of Representatives of the Congress of the United States*, that "the present deplorable civil war has been forced upon the country by the disunion- "ists of the southern States, now in revolt against the constitutional government, "and in arms around the capital; that in this national emergency, Congress, ban- "ishing all feelings of mere passion or resentment, will recollect only its duty to the "whole country; that this war is not waged upon our part in any spirit of oppres- "sion, nor for any purpose of conquest or subjugation, nor purpose of overthrowing "or interfering with the rights or established institutions of those States, *but to* "*defend and maintain the supremacy of the Constitution, and to preserve the Union* with "all the dignity, equality and rights of the several States unimpaired; and that as "soon as these objects are accomplished the war ought to cease."

Congressional Globe, July 22, 1861, page 222.

And three days afterwards the same resolution, substantially, was presented by Mr. Johnson, of Tennessee, and passed the United States Senate, *yeas* 30, *nays* 5.

Congressional Globe, July 25, 1861, page 265.

In his message to Congress in December, 1861, President LINCOLN said :

"In considering the policy to be adopted for suppressing the insurrection, I have

"been anxious and *careful* that the inevitable conflict for this purpose shall not de-
"generate into a violent and remorseless revolutionary struggle. I have, therefore,
"in every case thought it proper to keep *the integrity of the Union* prominent as the
"primary object on our part, leaving all questions which are not of vital military
"importance to the more deliberate action of the Legislature."

Again:

"We have attempted no propagandism and acknowledged no revolution." *
" * "Fellow citizens we cannot escape history. We of this Congress and this
"administration will be remembered in spite of ourselves. No personal significance
"or insignificance can spare one or another of us. The fiery trial through which we
"pass will light us down, in honor or dishonor, to the latest generation. We *say*
"we are *for the* UNION. The world will not forget that we say this."

And, again, in the proclamation of September 22nd, 1862:

"I, *Abraham Lincoln*, President of the United States of America, and Comman-
"der-in-Chief of the Army and Navy thereof, do hereby proclaim and declare, that
"hereafter as heretofore, the war will be prosecuted for the object of practically
"*restoring the Constitutional relation between the United States and each of the States*
"*and the people thereof*, in which States that relation is or may be suspended or dis-
"turbed."

For these objects alone, the Legislative, Executive and Judicial departments of the government have solemnly declared that the war was waged. An hundred treaties, sanctioned by innumerable oaths, could not make the obligation more sacred and binding before the civilized world.

There is no such thing in this country as confiscation without authority of law. No such right belongs to the Exec utive under the war power. It is in the legislature, solely.

"It is urged that in executing the laws of war, the executive may seize and the
"courts condemn all property which, according to the modern law of nations, is
"subject to confiscation, although it might require an act of the legislature to justify
"the condemnation of that property which, according to modern usage, ought
"not to be confiscated."

"This argument must assume for its basis the position that modern usage con-
"stitutes a rule which acts directly upon the thing itself by its own force, and not
"through the sovereign power. This position is not allowed. This usage is a
"guide which the sovereign follows or abandons at his will. The rule, like other
"precepts of morality, of humanity, and even of wisdom, is addressed to the judg-
"ment of the sovereign; and although it cannot be disregarded by him without
"obloquy, yet it may be disregarded."

"The rule is, in its nature, flexible. It is subject to infinite modifications. It is
"not an immutable law, but depends on political considerations which may con-
"tinually vary.

"Commercial nations, in the situation of the United States, have always a con-
"siderable quantity of property in the possession of their neighbors. When war
"breaks out, the question, what shall be done with enemy property in our country,
"is a question rather of policy than of law. The rule which we apply to the prop-
"erty of our enemy will be applied by him to the property of our citizens. Like
"all other questions of policy, it is proper for the consideration of a department
"which can modify it at will; not for the consideration of a department which can

"pursue only the law as it is written. It is proper for the consideration of the legislature, not of the Executive or Judiciary."—*Brown vs. the United States*, 8 *Cranch* 110.

It is well settled that there is no common law of forfeitures, or confiscations:

The United States vs. Hunter & Goodwin, 7, Cranch, 32.—State of Pennsylvania vs. Wheeling Bridge company, 13 Howard, 519.

Congress has legislated so far as in their opinion they were authorized by the Constitution or good policy. In all this legislation, however, the rights of loyal citizens are saved. Forfeitures and confiscations are only authorized of the property of persons "engaged in armed rebellion against the government of the United States, or aiding or abetting such rebellion;" and to secure condemnation proceedings are required to be instituted, and an adjudication had in a United States court.

The act of Congress, "to confiscate property used for insurrectionary purposes," approved August 6, 1861, (stat. vol. 12, page 319) declares all property *employed in aid of the rebellion with consent of the owners*, to be lawful subject of prize and capture wherever found. The act of July 12th, 1862, "to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," (stat. vol. 12, page 591) provided that the property of persons "*engaged in armed rebellion* against the government of the United States, or *aiding or abetting such rebellion*," and who should not return to allegiance after the President's warning, should be seized and confiscated, &c. And the act of March 12th, 1863, providing for the collection of abandoned property, &c., (stat. vol. 12, page 820) comprise the legislation of Congress on the subject. In all this there is no shadow of authority for seizure or condemnation of the property of loyal citizens. Alluding to this legislation, in the case of Mrs. Alexander's cotton, Chief Justice Chase, in delivering the opinion of the court, said:

"In this war, by this liberal and benificent legislation, a *distinction* is made be-
"tween those whom the rule of international law classes as *enemies*. All who have
"in fact maintained a *loyal adhesion to the Union*, are *protected in their rights* to cap-
"tured as well as abandoned property."

"It seems that in further pursuance of the same views, by an act of the next ses-
"sion, Congress abolished maritime prize on inland waters, and required captured
"vessels and goods on board, as well as all other captured property, to be turned
"over to the Treasury agents, or to the proper officers of the courts. This act
"became a law a few weeks after the capture now under consideration, and does not
"apply to it. It is cited only in illustration of the general *policy* of legislation, to
"mitigate as far as practicable, the hardships of the rules of war, and preserve for
"loyal owners, obliged by circumstances to remain in rebel States, all property, or
"its proceeds to which they have just claim, and which may in any way come to
"the possession of the government or its officers." 2, Wallace, 422.

Surely it was no offence to reside and possess property in the State of Virginia, at the breaking out of the rebellion. Nor was it any offence to remain there even subsequently. On the contrary, loyal citizens were encouraged to remain, under promise of protection, as we have seen, by the Chief Executive, who declared that all such "loyal citizens the government is bound to recognize and protect as being Virginia." When the war began, but few persons, comparatively, could have abandoned their property and homes, carrying with them their families to other States, without means of supporting them. Hence they were compelled to remain—many, no doubt, against their will and as a matter of positive necessity. Now, such persons having neither aided nor abetted the rebellion, have done no wrong. They need no pardon, and are subject to no punishment. There is no law of Congress which deprives them of any of their rights of property; not even an Executive edict, save the emancipation proclamation, since ratified by constitutional amendment. They stand, therefore, on the restoration of the authority of the government, entitled to every civil and political right that belongs to citizens of the United States, in any of the States.

But we are referred to the authorities on international law, in support of this claim for the United States of the "rights of the Conqueror under the laws of war." Those who claim for the government all these rights, as flowing from the laws of war, and find their authority in the writings of publicists on

international law, must admit the validity of the acts of secession, and, in effect, recognize the Southern Confederacy.

But modern international law sanctions no such claim of "paramount right of a captor," as set up by the Judge Advocate General, against the property of peaceable non-combatants. On this subject, Mr. Wheaton, says:

"Private property on land is also exempt from confiscation, with the exception "of such as may become booty in special cases, when taken from enemies in the field "or in besieged towns, and of military contributions levied upon the inhabitants of "the hostile territory. This exemption extends even to the case of an absolute and "unqualified conquest of the enemy's country. In ancient times both the movable "and immovable property of the vanquished passed to the conqueror. Such was "the Roman law of war; often asserted with unrelenting severity; and such was the "fate of the Roman provinces, subdued by northern barbarians, on the decline and "fall of the western empire. The last example in Europe of such conduct was that "of England by William of Normandy. Since that period, among the civilized "nations of Christendom, conquest, even when confirmed by a treaty of peace, has "been followed by no general or partial transmutation of landed property. The "property belonging to the government of the vanquished nation passes to the victorious State, which also takes the place of the former sovereign, in respect to the "eminent domain. In other respects, *private rights are unaffected by conquest*."

Chancellor Kent also enunciates the same doctrine in still more forcible language:

"There is no limitation to the career of violence and destruction, if we follow the "earlier writers of this subject, who have paid too much deference to the violent maxims and practices of the ancients, and the usages of the Gothic ages. They have "considered a state of war as a dissolution of all moral ties, and a license for every "kind of disorder and intemperate fierceness. An enemy was regarded as a criminal and an outlaw, who had forfeited his rights, and whose life, liberty, and property, lay at the mercy of the conqueror. Everything done against an enemy was "held to be lawful. He might be destroyed, though unarmed and defenceless. "Fraud might be employed as well as force, and force without any regard to the "means. But those barbarous rights of war have been questioned and checked, in "the progress of civilization. Public opinion, as it becomes enlightened and refined, "condemns all cruelty, and all wanton destruction of life and property, as equally "useless and injurious; and it controls the violence of war by the energy and severity of its reproaches."

And referring to the marked difference in the rights of war carried on by land and sea, he says:

"But there are great limitations imposed upon the operations of war by land, "though depredations upon private property, and despoiling and plundering the "enemy's territory, are still too prevalent, especially when the war is assisted by "irregulars. Such conduct has been condemned in all ages by the wise and virtuous, and it is usually severely punished by those commanders of disciplined troops "who have studied war as a science, and are animated by a sense of duty or the "love of fame. We may infer the opinion of Xenophon on this subject (and he was "a warrior as well as a philosopher,) when he states, in the *Cyropædia*, that Cyrus "of Persia gave orders to his army, when marching upon the enemy's borders, not "to disturb the cultivators of the soil; and there have been such ordinances in "modern times for the protection of innocent and pacific pursuits. Vattel condemns

"very strongly the spoliation of a country without palpable necessity: and he speaks "with a just indignation of the burning of the Palatinate by Turenne, under the "cruel instructions of Louvois, the war minister of Louis XIV. *The general usage now "is, not to touch private property upon land, without making compensation,* unless in "special cases, dictated by the necessary operations of war, or when captured in "places carried by storm, and which repelled all the overtures for a capitulation."— "*Kent's Commentaries*, Vol. 1, page 88, et seq.

And in a note, it is added:

"When a Russian army, under the command of Count Diebitsch, had penetrated "through the passes of the Balkin to the plains of Romelia, in the summer of 1829, "the Russian commander gave a bright example of the mitigated rules of modern "warfare, for he assured the Musselmen that they should be entirely safe in their per- "sons and property, and in the exercise of their religion; and that the Musselmen "authorities in the cities, towns and villages might continue in the exercise of their "civil administration for the protection of person and property. The inhabitants were "required to give up their arms, as a deposit, to be restored on the return of peace, "and in every other respect they were to enjoy their property and pacific pursuits as "formerly. This protection and full security to the persons and property of the "peaceable inhabitants of conquered towns and provinces, are according to the "doctrine and declared practice of modern civilized nations."—*Dodsley's Ann. "Reg.*, 1772, page 37.

Shall history record the fact that American commanders were more ignorant of, or less willing to be governed by the mitigated rules of modern warfare, in a contest with enemies of our own race and kindred, than a Russian General in prosecuting a war against uncivilized, unchristianized, Turks?

In our system of government, the suppression of an insurrection, by military force, is specially provided for; it is, strictly, a right authorized by the organic law. In performing this duty to the whole people, and the States, the relations of peaceful and law-abiding citizens toward the general government, are not changed by the fact of accidental residence at the time within the limits of an infected or disloyal district. The question of loyalty or disloyalty is to be determined by actual overt act of the individual citizens. The innocent and the guilty cannot be thrown into one mass, and treated as rebels, public enemies, and the laws of war invoked to sanction indiscriminate confiscations, forfeitures and punishments. Such a doctrine is utterly at variance with the whole theory of our government. It deprives our citizens of their dearest constitutional rights, and places them all, alike, at the mercy of a military despotism, in times of civil commotion and danger. The gen-

ius of American liberty holds such doctrines in utter abhorrence.

The claim for the exercise of such extreme rights, under the laws of war, is discussed by Justice Woodbury, in a manner that commends itself to the approval of every enlightened, humane, and patriotic mind. He said :

"Under the worst insurrections, and even wars, in our history, so strong a measure as this is believed never to have been ventured on before by the general government, and much less by any one of the States, as within their constitutional capacity, either in peace, insurrection, or war. And if it is to be tolerated, and the more especially in civil feuds like this, it will open the door in future domestic dissensions here to a series of butchery, rapine, confiscation, plunder, conflagration, and cruelty, unparalleled in the worst contests in history between mere dynasties for supreme power. It would go in practice to render the whole country—what Bolivar at one time seemed to consider his—a *camp*, and the administration of the government a *campaign*."

"It is to be hoped we have some national ambition and pride, under our boasted dominion of law and order, to preserve them by law, by enlightened and constitutional law, and the moderation of superior intelligence and civilization, rather than by appeals to any of the semi-barbarous measures of darker ages, and the unrelenting lawless persecutions of opponents in civil strife which characterized and disgraced those ages."

"Again, when belligerent measures do become authorised by extreme resistance, and a legitimate state of war exists, and civil authority is prostrate, yet war measures must be kept within certain restraints in all civilized communities."

"The common laws of war, those maxims of humanity, moderation and honor," which should characterize other wars, Vattel says (B. 3, ch. 8, Sec. 284 and 285) "ought to be observed by both parties in every civil war." Under modern and christian civilization, you cannot needlessly arrest or make war on husbandmen or mechanics, or women and children. (Vattel, B. 3, ch. 8, sec. 148.) The rights of war are against enemies, open and armed enemies, while enemies and during war, but no longer. And the force used then is not to exceed the exigency—not wantonly to injure private property, nor disturb private dwellings and their peaceful inmates." 7 Howard, 85.

There is ample authority for the suppression of insurrection in the constitution. And when the insurrection has been suppressed, the restoration of the constitution and laws is virtually effected. By the suppression of the insurrection the government of the United States does not acquire a new title, as conqueror ; but simply resumes its authority, as of right, which had been suspended or in abeyance. It is impossible for it to make *conquest of a part of itself*.

Such was the universal sentiment of the country, until a very recent period. And the practice of the Department was fully in accordance therewith.

General Order, No. 35, was adhered to for more than a year, and while the rebellion was still in actual existence.

Under it claims in all the excepted districts were considered, and such as were found allowable under the law and properly established were paid. Afterwards, however, when peace had come, when for months there had not been one armed rebel in the field, a new light dawned and a new dispensation followed. It was suddenly discovered that these excepted districts were and had been all the while in rebellion, and that the "rights of the conqueror under the laws of war had not been formally surrendered." Hence, followed "Circular No. 51," from the Adjutant General's office, War Department, November 27, 1865, promulgating the opinion of the Chief of the Bureau of Military Justice upon the 2d and 3d sections of Act of 4th July, as follows:

"How far claims connected with the suppression of the rebellion arising in disloyal "States, then at open war with the government, will be allowed, is a question so "complicated with political and other considerations proper for the determination of "Congress, that it is believed the executive administration should not assume to act "upon such claims without the clearest authority conferred by law. It is not sup- "posed to have been the intention of Congress to bestow such authority by the act "referred to this Bureau for construction."

And thenceforward the exceptions contained in said "General order, No. 35," have been disregarded and practically revoked.

It thus appears that the Chief of the "Bureau of Military Justice" espouses the theory which stands opposed to the policy of the Executive, declared by the late President as to the object and conduct of the war, and now adhered to by the present Executive in the administration of the government and restoration of the Union. The proclaimed policy of the political department of the government; the Executive Head and Commander-in-Chief of the Army and Navy; in perfect accordance with the legislative acts, as expounded by the highest judicial tribunal of the country, is thus contemned and set at naught.

This policy, so wise and just, adhered to during the war, and under which the rebellion was put down, and the integrity and rightful authority of the government maintained, in

every State, is now in the hour of victory and upon the return of peace, attempted to be set aside, and a policy of conquest and subgugation substituted in its stead. The law of Congress of July 4th, 1864, and the "GENERAL ORDER" No. 35, promulgated in pursuance thereof; the decision of the Supreme Court, given but a short time afterward; all while the war was yet flagrant, are discarded; and a new theory enunciated, by which loyal citizens are to be deprived of the most sacred constitutional guaranties; their property confiscated without authority of law and themselves and families reduced to abject poverty, for no fault of theirs, and in utter viclation of the plighted faith of the government. It is not enough that they have made sacrifices and submitted to appropriations of their property to public use in a military exigency without compensation, waiting the return of peace, when the government to which they have kept allegiance could be just without detriment to the public safety.

During the war, and while the government was laboring under financial difficulties, there were valid reasons for postponement and delay. But these no longer exist. If that were the objection now made, Mr. Segar would submit without complaint, notwithstanding more than five years have elapsed since his property was taken for the use of the government. But when he is told that his right to compensation depends solely on the will of a conqueror, or the discretion of a Congress, he feels it his duty to appeal to higher authority. His claim rests upon pre-eminently meritorious as well as incontestibly legal grounds. Next to the gallant soldiers who endured the hardships and privations of the camp, and bared their bosoms to the shock of battle, stand the claims of those who furnished supplies to our troops and yielded up their property to the use of the government, in a public exigency, without compensation. It was an easy matter for those who were realizing ready pay and large profits out of their sales to the government, to be loyal and devoted to its support; but history alone can do jus-

tice to the heroic patriotism of some of the inhabitants of so called "disloyal districts," who, at the peril of life, as well as the destruction of their property, maintained their allegiance to the Union during the darkest hours of the war. Especially was this the case in the parts of Virginia and Tennessee, excepted from the proclamation of January 1st, 1863. It is time that these people should cease to be treated as "public enemies," and that private rights and constitutional guaranties should be respected in their behalf, as well as other citizens more fortunately situated, perhaps, but no better entitled to protection.

The good faith and honor of the country demand that the President shall interpose to prevent this great injustice committed in the name and under the authority of his administration. The Constitution has devolved upon him the high duty to "take care that the laws be faithfully executed;" and to see that no dishonor stains the national escutcheon. If branded with PUNIC faith and REPUDIATION, the stars that now shine with such lustre on the banner of the Republic will pale before the nations; and a stigma be cast upon our hitherto fair fame never to be blotted out.

With great respect,

R. J. ATKINSON,

Attorney for Mr. Segar.

TO THE PRESIDENT.